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<b>T.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0666</b>
	)	<b>Issued: May 19, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Milwaukee, WI, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

<sup>3</sup> The Board notes that, following the January 29, 2020 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish an emotional condition in connection with the accepted August 24, 2019 employment incident.

## **FACTUAL HISTORY**

On August 30, 2019 appellant, then a 35-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2019 she sustained soreness and bruising to her left hip when a customer on her route became angry charged after her and later tried to run her over with her vehicle while in the performance of duty. She noted that while on the sidewalk she had to jump out of the way of the customer's vehicle. Appellant recounted that the customer continued to make threats from a police car after being arrested for disorderly conduct. She further noted that she was mentally unfit to continue performing her job until she could undergo therapy.<sup>4</sup> On the reverse side of the claim form, M.E., an employing establishment supervisor, contended that appellant was not in the performance of duty when injured because she did not sustain any physical injuries. Appellant stopped work on August 24, 2019.

Appellant subsequently submitted an undated narrative statement further describing the August 24, 2019 employment incident.

A work injury summary report dated August 24, 2019 by Anne Mutitu, an advanced practice nurse prescriber, documented that appellant was physically assaulted at work. A note of even date by a registered nurse bearing an illegible signature, recommended that appellant remain off work for the remainder of the day.

In a September 11, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

In an October 2, 2019 note, Ryan Larkey, a licensed clinical social worker, diagnosed post-traumatic stress disorder (PTSD) and generalized anxiety disorder. He noted a treatment goal of reducing feelings of panic and anxiety related to traumatic incidents.

OWCP received an incomplete authorization for examination and/or treatment (Form CA-16) dated October 1, 2019 noting an August 24, 2019 date of injury and describing appellant's injury as "mental anguish." On the reverse side of the Form CA-16, Part B attending physician's report, Mr. Larkey diagnosed PTSD due to a work-related incident.

By decision dated October 17, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she had sustained an injury in the performance of duty, as alleged. It noted that she had not responded to its development questionnaire requesting

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<sup>4</sup> The record reflects that appellant previously filed a Form CA-1 alleging that on July 18, 2014 she developed an emotional condition after witnessing a traumatic event while in the performance of duty. OWCP denied the claim under OWCP File No. xxxxxx980. That claim has not been administratively combined with the present claim.

additional information regarding the alleged employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.<sup>5</sup>

On November 6, 2019 appellant requested reconsideration of OWCP's October 17, 2019 decision. She attached a response to the development questionnaire dated September 25, 2019 relating that she had sustained bruises to her hip and arm as a result of falling when she jumped out of the way of the customer's car. Appellant explained, however, that she was making a claim only for an emotional condition.

Appellant also submitted a municipal court case information statement dated October 31, 2019, which noted that the customer involved in the August 24, 2019 incident was found guilty and fined for disorderly conduct.

In a report dated January 2, 2020, Dr. Shehla Baig, a family medicine specialist, diagnosed PTSD and recommended ongoing behavioral therapy with a clinical social worker.

By decision dated January 29, 2020, OWCP modified its prior decision, finding that appellant had established that the August 24, 2019 employment incident had occurred, as alleged. However, it continued to deny the claim, finding that she had not submitted sufficient medical evidence to establish a diagnosis in connection with the accepted August 24, 2019 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>7</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing

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<sup>5</sup> On October 18, 2019 appellant accepted an offer from the employing establishment for a full-time modified position as a city carrier, with duties including setting routes and collections for any station and transporting vehicles between stations for up to eight hours per day.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

that the identified compensable employment factors are causally related to his or her emotional condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an emotional condition in connection with the accepted August 24, 2019 employment incident.

Appellant submitted a January 2, 2020 letter by Dr. Baig, a family practitioner, which contained a diagnosis of PTSD. However, OWCP's procedures provide that, "[a] claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted."<sup>11</sup> Consequently, Dr. Baig's report is of no probative medical value for purposes of establishing entitlement to FECA benefits.

The remaining evidence of record consists of nursing notes dated August 24, 2019 and the October 2 and 16, 2019 reports of Mr. Larkey, a licensed clinical social worker. Certain healthcare providers such as physician assistants, physical therapists, nurse practitioners, and social workers are not considered "physician[s]" as defined under FECA.<sup>12</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>13</sup>

As there is no evidence of record that establishes a valid diagnosis of an emotional condition from a qualified physician in connection with the accepted employment incident, the Board finds that appellant has not established that she sustained an emotional condition causally related to the accepted August 24, 2019 employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>10</sup> *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(3)(c) (January 2013).

<sup>12</sup> Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See id.* at Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also B.B.*, Docket No. 06-0392 (issued January 22, 2007) (treatment notes from social workers and mental health counselors are of no probative value as they are not considered to be physicians under the Act); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000); *Frederick C. Smith*, 48 ECAB 132 (1996).

<sup>13</sup> *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk, id.*

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an emotional condition causally related to the accepted August 24, 2019 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2020 decision of the Office of Workers' Compensation Programs is affirmed.<sup>14</sup>

Issued: May 19, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).